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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of

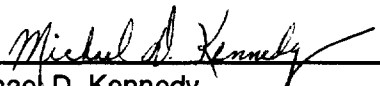
Rules and Regulations Implementing
the Telephone Consumer Protection Act
of 1991

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CC Docket No. 92-90

Comments in Support of Petition
for Reconsideration and Clarification

Motorola, Inc. is pleased to submit the attached Comments in the proceeding captioned above.


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SUMMARY

Motorola, Inc. submits these Comments seeking clarification on one issue raised in this proceeding: that fax boards (that is, modems specifically designed for faxing and built into personal computers) are not subject to the manufacturing requirements specified in the Telephone Consumer Protection Act and similarly are not to be included within the scope of the Commission's Report and Order implementing this statute. This interpretation is correct from a legal standpoint (based on the language in the enabling statute) and is also appropriate from a practical standpoint: to impose such a requirement would impose onerous burdens: it would require fundamental re-design of fax board integrated circuitry. The Commission should clarify that its adopted rules do not include fax boards. If, on the other hand, the Commission concludes that the public interest is served by such an inclusion, it should do so only after obtaining public comment on this issue through a rulemaking proceeding. At the very least, because of the onerous design and manufacturing burdens involved in bringing fax boards into compliance, the Commission should provide for an 18 month transition period, such as is normally done for Part 68 equipment situations.

BACKGROUND DISCUSSION

Motorola, Inc. ("Motorola") is a global manufacturing company and a leader in both the electronics industry as well as the mobile telecommunications industry. The company designs and supplies state-of-the-art integrated circuitry, microprocessors, etc. Included in the Motorola family of businesses is its Codex subsidiary, which manufactures and provides, on a worldwide basis, a wide array of products ranging from modems to statistical multiplexers to business system networks. Codex focuses on growth markets such as backbone networking, internetworking, access and feeder products, as well as professional services. Another

subsidiary, Universal Data Systems (UDS) offers related high-speed modems and digital products for higher speed switched and leased-line digital data services. These businesses are directly impacted by the subject Report and Order.

It is essential that any Commission policies which address fax boards take into account the fact that the telecommunications industry is involved in a close relationship with the electronics industry, in order to have integrated circuitry (such as fax boards, or modems) which are in tune with the rapid innovations taking place in the world of telecommunications.

THE TELEPHONE CONSUMER PROTECTION ACT EXEMPTS FAX BOARDS FROM ITS STATUTORY MANDATE

The Report and Order's discussion of facsimile machines does not specifically address the narrow issue of fax boards.¹ In its Order responding to requests for stay of the effective date of final regulations, the Commission indicated that it had not yet addressed the question of whether fax boards are subject to the Commission's rules and would reserve this issue for reconsideration on the merits.²

As was stated by the Manufacturing Associations (EIA and TIA)³ in their Petition for Reconsideration and Clarification, the defining language in the Telephone Consumer Protection

¹ See Report and Order, CC Docket No. 92-20, FCC Mimeo FCC 92-443, released October 16, 1992, at par. 54.

² See Order, CC Docket No. 92-90, FCC Mimeo DA 92-1717, released December 18, 1992, fn. 6, par. 8. The Order also incorrectly characterizes, at par. 3, the discussion of fax boards which was offered by the Manufacturing Associations (EIA and TIA) concerning fax boards. The Order suggests that, in the view of the manufacturers, fax boards should be subject to the manufacturing requirements imposed by the Report and Order, *supra*. On the contrary, the Manufacturing Associations have contended that fax boards are clearly exempted by the defining language in the Telephone Consumer Protection Act.

³ Motorola is a member of each of the two manufacturing associations and supported the filing of the Petition for Reconsideration and Clarification by the two associations.

Act makes it clear that "fax boards," that, is, specially designed modems built into, or used as peripheral accessories to, personal computers, are not subject to the manufacturing requirements imposed by the statute. In contrast to Section 227(b)(1)(C), which applies to any "telephone facsimile machine, computer, or other device," Section 227(d)(2) applies only to "telephone facsimile machines." That term, in turn, is defined as:

"equipment which has the capability (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (b) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper."

TCPA, # 227 (a)(3), emphasis added

A fax board does neither; its input and output are both electronic. By the language of the statute, it is clear that Congress did not intend to instruct the Commission to include fax boards within the scope of its Report and Order.

**PRACTICAL CONSIDERATIONS ARGUE AGAINST
INCLUDING FAX BOARDS WITHIN THE COMMISSION'S RULES:
ONEROUS BURDENS ON THE INTEGRATED CIRCUITRY INDUSTRY**

Not only is the inclusion of fax boards not mandated by the TCPA; it also disserves the public interest by imposing heavy (and unwarranted) burdens on the integrated circuitry industry which designs and manufactures fax boards. These integrated circuit boards, designed to send and receive computerized facsimile messages, are intricate, complex devices. They have been designed with specific functions in mind, namely to perform the various functions of assembling, formatting, and transmitting the message's text, as well as the headers and other identifying bits of information which ensure reliability, security, etc. These functions are built onto a circuit board which may have several layers, each of which is mapped out into

specific areas on the circuit board for purposes of performing the various desired functions. The "real estate" or "landscape" of such circuit boards must be carefully planned- and it is crowded, in order to accomplish the remarkable miniaturization now achievable with today's technology.

Fax boards would, if included under the Report and Order's scope, be required to incorporate a new capability so as to access a clock (or other continuous timing mechanism) and incorporate a read-out from that clock into the assembling, formatting, and transmission functions which were described previously. No such capability exists now, and it is a fundamentally different feature from those presently incorporated into the "landscape" of today's integrated circuit boards for fax modems. This is simply not an easy add-on. To repeat what was stated above, no such requirement was mandated by the TCPA.

THE PUBLIC INTEREST IN SUCH A REQUIREMENT HAS NOT BEEN EXAMINED

The above discussion has presented some of the practical reasons which argue against the Commission's extending the scope of the TCPA's manufacturing requirements to also include fax boards. There may be many more factors which should be considered as well. At present, there is no public record on this issue. The Report and Order's discussion of facsimile machines did not address fax boards. While the matter was raised on reconsideration by the Manufacturing Associations, the Commission has not called for comment on the question, stating only (in the Order denying stay of the effective date of manufacturing requirements) that the issue of fax boards would be dealt with under reconsideration.

At this point, the record has not been adequately developed so that the Commission can make an informed decision. If the Commission were ultimately to decide that it is in the public

interest to adopt rules which include fax boards, it should do so only after compiling a full public record on this issue.

Assuming that such a requirement were to be imposed (and we respectfully submit that it should not), delays would be unavoidable as the integrated circuit industry turns to this re-design project. The more usual approach in Part 68 and related rulemakings is to allow transition intervals of at least 18 months. Such a transition would be far more reasonable than the radically compressed deadline specified pursuant to the statute's scenario, which was not intended to apply to fax boards.

CONCLUSION

Motorola submits its comments on a narrow aspect of the various matters raised in the Petition for Reconsideration and Clarification: the issue of whether the Commission's rules should be extended to include not just fax machines but also fax boards. We respectfully submit that the language of the Telephone Consumer Protection Act makes it clear that Congress, in its defining language, exempted fax boards or modems from the equipment it intended to cover, in terms of manufacturing requirements. Furthermore, it would impose onerous burdens on the integrated circuitry industry to bring fax boards within the scope of the Report and Order's rules. Such a policy, which was not contemplated by the enabling statute, would involve fundamental re-design of the circuitry of fax boards, in a different direction from what the user public has up to this point demanded. The Commission should, therefore, clarify that fax boards are not interpreted to be included within the scope of the rules set forth in the Report and Order. Before the Commission reaches a conclusion that such an inclusive policy would serve the public interest, it should issue a further Notice calling for comments, so that a full record can be developed on this issue. At the very least, it should provide for a normal 18 month transition

within which the integrated circuitry industry can have a reasonable period of time to re-design current products to meet this new and fundamentally different aspect of fax board technology.

CERTIFICATE OF SERVICE

I, Alice M. de Séve, of Motorola, Inc., do hereby certify that on this 4th day of January, 1993 a copy of the foregoing "Comments" was sent to each of the following by first-class mail, postage-prepaid except where service by hand is indicated(*):



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